

Understanding the legal regulation of suicide incitement in the contemporary criminal law with a case study on Bosnia and Herzegovina

Comprender la regulación jurídica de la incitación al suicidio en el derecho penal contemporáneo con un estudio de caso sobre Bosnia y Herzegovina

Compreensão da regulamentação legal do incitamento ao suicídio no direito penal contemporâneo com um estudo de caso na Bósnia e Herzegovina

Lejla Softić, MA¹
Prof. Dr. Ena Kazić Čakar²

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¹ Legal Intern, Basic Court of Brčko District (Bosnia and Herzegovina).

E-mail lejlaasoftic59@gmail.com

ORCID: <https://orcid.org/0009-0005-4983-0982>

² Associate Professor at the Faculty of Law, International University of Sarajevo (Bosnia and Herzegovina).

E-mail: ekazic@ius.edu.ba

ORCID: <https://orcid.org/0000-0003-2467-2947>



Abstract

Incitement to suicide has been regulated differently in the majority of legal systems worldwide, through both direct codification or as a part of other criminal offenses. The modern media of communication that had been developed brought new legal challenges in preventing harmful impact from one person to another, which may result in suicide. Very recently, similar cases took place in Bosnia and Herzegovina, leaving many questions unresolved: should the individuals who were (online) mocking victims be treated as inciters, thus criminal offenders. Therefore, unveiling the legal regulation of act of criminal offence Incitement to Suicide tests if the legislation updated their norms in line with these new challenges. Through doctrinal and comparative methods, legal analysis of the regulation of incitement to suicide will be conducted in this manuscript, withstanding factual differences in its' sanctions and difficulties in prosecution, with the focus being on the criminal law of Bosnia and Herzegovina. Comparison will be made with the regulation in the United States, United Kingdom, Netherlands and Germany. The manuscript will result with recommendations about the prevention of the critical events and incitement to suicide to be perpetrated.

Keywords: Criminal law; criminal sanction; incitement to suicide; suicide; prevention.

Resumen

La incitación al suicidio se ha regulado de forma diferente en la mayoría de los ordenamientos jurídicos de todo el mundo, tanto mediante codificación directa como formando parte de otros delitos penales. Los modernos medios de comunicación que se han desarrollado plantean nuevos retos jurídicos a la hora de prevenir el impacto nocivo de una persona a otra, que puede desembocar en el suicidio. Muy recientemente, se produjeron casos similares en Bosnia y Herzegovina, que dejaron muchas cuestiones sin resolver: ¿debería tratarse a las personas que se burlaban (en línea) de las víctimas como incitadores y, por tanto, como delincuentes? Por lo tanto, al desvelar la regulación jurídica del acto delictivo de Incitación al Suicidio se comprueba si la legislación actualizó sus normas en consonancia con estos nuevos retos. A través de métodos doctrinales y comparativos, en este manuscrito se llevará a cabo el análisis jurídico de la regulación de la incitación al suicidio, a pesar de las diferencias fácticas en sus sanciones y las dificultades en el enjuiciamiento, centrándose en el derecho penal de Bosnia y Herzegovina. Se comparará con la normativa de Estados Unidos, Reino Unido, Países Bajos y Alemania. El manuscrito resultará con recomendaciones sobre la prevención de los sucesos críticos y la incitación al suicidio a perpetrar.

Palabras clave: derecho penal; sanción penal; incitación al suicidio; suicidio; prevención.

Resumo

O incitamento ao suicídio tem sido regulamentado de forma diferente na maioria dos sistemas jurídicos em todo o mundo, tanto por meio de codificação direta quanto como parte de outros delitos criminais. A mídia moderna de comunicação que foi desenvolvida trouxe novos desafios legais para evitar o impacto prejudicial de uma pessoa para outra, o que pode resultar em suicídio. Muito recentemente, casos semelhantes ocorreram na Bósnia e Herzegovina, deixando muitas questões não resolvidas: os indivíduos que zombavam das vítimas (on-line) deveriam ser tratados como incitadores e, portanto, criminosos. Portanto, a revelação da regulamentação legal do ato de ofensa criminal Incitação ao Suicídio testa se a legislação atualizou suas normas de acordo com esses novos desafios. Por meio de métodos doutrinários e comparativos, a análise jurídica da regulamentação do incitamento ao suicídio será conduzida neste manuscrito, apesar das diferenças factuais em suas sanções e das dificuldades na persecução penal, com foco na legislação penal da Bósnia e Herzegovina. Será feita uma comparação com a regulamentação dos Estados Unidos, Reino Unido, Holanda e Alemanha. O manuscrito resultará em recomendações sobre a prevenção de eventos críticos e o incitamento ao suicídio.

Palavras-chave: Direito penal; sanção penal; incitação ao suicídio; suicídio; prevenção.

I. INTRODUCTION

On October 28, 2022, M. D., a 22-year-old male, M.D., from Laktaši in Republika Srpska, tragically took his own life as a result of a video of him being posted online (Borić, 2022). A few days before this event, M.D. visited a local gas station to apply for an available job position. During this visit, an employee secretly recorded a video of M.D. while filling out the application form and mocked him. The following day, the video was uploaded to the internet, subjecting M.D. to derogatory comments and turning him into the target of public ridicule. After reporting the incident to the authorities, M.D. tragically ended his life on October 27, the day before the police responded (Nikolić, 2022). In connection with the unauthorized filming, two gas station employees were detained by police on charges of illegal recording but were released the following day. Another victim of online humiliation was a woman from Bosnia and Herzegovina, identified as D.M., who tragically took her own life on November 5, 2023, after a video of her defecating in a public space was uploaded online (SrpskaInfo, 2023). The deceased's family made efforts to locate the individual responsible for recording and disseminating the video, but as of now, no information has been uncovered regarding the perpetrator.

These are the most recent cases of suicide in Bosnia and Herzegovina that came because of actions of other individuals who brought them in such a psychological and emotional state that they found taking their own lives would be the only solution for that situation. The question is, can we understand those who published those materials and made them bring such a decision as inciters to suicide, as well as would there be any criminal responsibility for the audience who created such negative comments that also made them feel as if they have no other chance but to take away their own life. This institute, when electronic communication is used to suggest or incite suicide, is named "cybersuicide" (Cyberbullying, 2025). However, the usage of electronic communication is just one of the means of inciting an individual to suicide. Other methods may be used as well, such as direct communication and perpetual suggestions, making the act possible. They all together are acts that are criminalized in many countries, such as Incitement to Suicide. As it directly harms and violates human life as the most important value, many societies decided to criminalize it and set it as a criminal offense. The aim of this manuscript¹ is to establish the characteristics of such an act and determine if and how it has been regulated in Bosnia and Herzegovina. This country is facing sophisticated forms of incitement to suicide as presented in

1 This manuscript is an enhanced, adapted, and updated partial version of the unpublished master thesis of Lejla Softić. The manuscript is the result of the joint work of both authors.

the abovementioned examples. Given the specific constitutional distribution of jurisdictions in criminal legislation in Bosnia and Herzegovina, this study will examine and compare all relevant criminal codes addressing this particular offense. Cybersuicide, and more broadly, incitement to suicide, is not a phenomenon exclusive to Bosnia and Herzegovina; it occurs in multiple other countries as well. Consequently, this research aims to explore how various selected countries have approached and legislated on this issue. A combination of normative, descriptive, and statistical legal methods will be employed to achieve these objectives. The manuscript is organized into four parts. Following the introductory section, the second part provides a legal analysis of the regulation of the criminal offense of Incitement to Suicide in Bosnia and Herzegovina. The third section presents a comparative analysis of how the United States, United Kingdom, Netherlands, and Germany address this criminal offense. The final section concludes with recommendations.

1. Understanding the Problem

Suicide as a phenomenon is a major global health problem since each year, an estimated 800,000 deaths (Moir *et al.*, 2023) from suicide take place in the world. According to Moir *et al.* (2023) (through Stene-Larsen and Reneflot, 2019), men and younger age groups are at higher risk. According to the statistical data for Bosnia and Herzegovina, it has a suicide rate of 10.9 per 100 000 population (WHO, 2022). "Over the study period from 2010 to 2020, suicides increased 7.3%. Males comprised 70-75% of suicides in each year, and the rate of male suicides was 2.5 times that of females" (Cilovic-Lagarija *et al.*, 2021, p. 3). Furthermore, the most recent data provided by the Centre for Security Studies BH indicate that 1,431 people committed suicide in Bosnia and Herzegovina during the period from 2020 to 2023 (Centre for Security Studies BH, 2024). For the 2023, the highest number of suicides happened in Federation of Bosnia and Herzegovina – 189 cases, while in Republika Srpska there were 175 and in Brčko District BH 3 cases.

The factors that can contribute to such a decision as it is to take own life may vary from economic (poverty, unemployment), social (war, abuse, negative social impact), psychological (mental diseases) to biological ones (disease, drug or alcohol abuse). All of these factors may have direct impact on the individual so that they on their own create a decision for suicide. However, these factors may be fortified by the impact of individuals on the suicidal person, who may fortify their already existing decision to commit suicide, or event to create one. They may act directly, through a

“friendly” conversations, but also indirectly by creating such a state of mind by humiliation or similar act, which results with the decision on committing suicide.

Internet with all the benefits for the society it brings, naturally brings some risks and concerns. That sphere which makes our lives easier, making the knowledge growth more efficient and comfort zone of anonymity at the same time is a place where cyberbullying, including sexting, online grooming (Kazić, 2021, p. 83), cybersuicides take place. For example, cyberbullying, which is “the behavior of inflicting harm upon a certain individual or group by using information or communication technologies” (Tuncer & Sezer, 2021), usually consumes cats of “offensive messages, mocking, teasing, intimidating, acquiring private information for spreading them” (Tuncer and Sezer, 2021). The bullying itself also consists of those acts, only the sphere of acting is less global, it is rather interpersonal in a more narrow social environment. Regardless which is in questions, they also may result with suicide. The bullers with their acts may bring an individual to suicide, and suicide as such is not a criminal offence, the question of their responsibility remains unsolved. The level of negative impact by their act, their criminal responsibility (intent) are factors which made legislators to criminalize their acts as Incitement to Suicide.

2. *Illustrating the Problem*

The rapid advancements in technology and digitalization can have detrimental psychological effects, necessitating regulatory action through criminal and specialized laws to safeguard individuals, especially minors (Moir *et al.*, 2023). While case-law related to incitement to suicide remains limited, certain notable cases, including online humiliation and messaging that led to suicides, emphasize the urgency of addressing this issue. In response, some countries have enacted specific legislation to mitigate this growing social concern.

Blue Whale Game

Most prominent example of online incitement to suicide is widely known Russian game from 2013 called the Blue Whale Game. The game is based on the concept that so-called “curators” of the game set out different challenges and dares to be executed over a 50-day period (NDTV World, 2024). Each tasks executed were required to be photographed or videotaped as proof of successful task. It may seem harmless at first but it quickly escalates from “watch a scary movie” to “cut a whale in your arm”. At the end of the 50th day, the player is asked to complete the game and kill themselves.

Unfortunately, number of children worldwide has fallen a victim to this game, with recorded deaths linked to this game mostly in the United States, Russia, Ukraine and India (NDTV World, 2024). The game is structured precisely to manipulate players in completing the game by retrieving personal information during the course of the game for further uses of it to threaten or blackmail.

In 2016, Philipp Budeikin, was arrested as the creator of the Blue Whale Game and charged with the offence Incitement to suicide. In the following year, 2017, he pleaded guilty and was sentenced to three years of imprisonment (Adeane, 2019). However, Russian authorities did not commit to further investigation of the whole concept. Reportedly, there are over 130 cases of children suicides as a consequence of this game and no subsequent investigation was initiated (Adeane, 2019). Allegedly, the whole purpose of the game for Budeikin was to gain enough media following to promote his music career. The Game did not stop there. In 2020, an Indian student at the University of Massachusetts committed suicide and in the course of investigation it has been found that he participated in the Blue Whale game (Dalmia, 2024).

The issue has surpassed all levels of concern to the point where online live-streams² in which people commit suicide are being broadcasted over the Internet (Moir *et al.*, 2023, pg.3). Unfortunate case in the United States about a 12-year-old girl Katelyn, who broadcasted her suicide in 40 minutes long livestream on Live.me, has been taken down only after the unfortunate event (Phillips, 2021). Several people screen recorded this stream and days after suicide Facebook those videos were still circling around on Facebook (Phillips, 2021). Because of this specific reason, a legislative response should be made which obligates social media authorities to immediately end reported livestreams. Additionally, this is one of the prevention models because people who publicly express their wish to commit suicide are in most cases seeking reassurance to do it. Cutting of streams reported by viewers in this case could perhaps give an opportunity to a person to reconsider their choices before people online encourage them to do so. Consequently, traces of such videos can cause mental distress and develop serious mental problems, such as post-traumatic stress disorders.

Commonwealth v. Carter

In 2017, Michelle Carter was convicted of manslaughter for encouraging Conrad Roy to commit suicide. The sentence imposed by Massachusetts juvenile Court was

2 According to Fratini and Hemer (2020), there are four main types of audience roles in such suicides: the suicide 'expert', the silent one, the life saver and the troll. See more: Moir *et al.* (2023).

imprisonment for a term of only fifteen months. The Court in Massachusetts, by reaching this final judgment in the case of Carter, ended the first successful prosecution of an offender for manslaughter for causing another person's suicide.

Michelle (15) and Conrad (16) met in 2012 on a family vacation. After the vacation, they continued to electronically communicate with each other since they lived thirty-five miles apart. Their friendship quickly emerged into romantic relationship but the couple have met in person just on few occasions. Conrad attempted suicide in 2012, while both of them have been diagnosed with depression and often engaged in conversations about suicide. From July 2014 and onwards, Michelle provided support and help in planning Conrad's suicide even to the extent where she advised him to do research on best method and how to successfully manufacture carbon monoxide. In the days preceding the act, Conrad expressed that he was hesitant and concerned for effects of his act on his family. However, Michelle constantly reassured him that she will offer them support and that he should do it to keep his promise to her.

On July 12, 2014, Conrad drove himself to the parking lot of K-Mart and committed suicide. Police investigation afterwards examined exchange of messages and calls from Conrad's phone. Based on such evidence, they indicated two forty-two-minute calls between Conrad and Michelle preceding the suicide. During the last call, he exited the car and told Michelle that he was afraid the plan is working when she encouraged him to get back and finish it. In the days following his death, she denied to have any knowledge about his plan. It was only after she became aware of the evidence police has found, that she confided in her friend Samantha about her involvement and claimed that no one would understand her since they have not helped anyone with suicide.

The State of Massachusetts, as other US States, does not criminalize incitement and assistance to suicide neither does it criminalize suicide. Elements of manslaughter, based on the case law, refer to "wanton and reckless conduct" which ultimately as its' consequence causes death. US legislation in general relies onto foreseeability element – Michelle should have foreseen a potential risk of death. The case of *Commonwealth v Carter* has embarked and caused distress to the society worldwide, and is the first thing that comes up in a conversation about incitement to suicide. Michelle's reckless behavior was established by the Court as: "any woman in [her] position would appreciate the danger in advocating that carbon monoxide poisoning is a painless and effective way of committing suicide to a suicidal teen" (Zavala, 2017, p. 8).

After being sentenced, Michelle appealed contesting that manslaughter is dependent on physical element of the offence and cannot be committed by verbal interaction. The Appeal Court rejected her claim, holding that: "the coercive quality of

her behavior, in the context of an intimate relationship, coupled with the deceased's delicate mental state and the constant pressure Carter put on him during their long-distance relationship, meant that she had 'overborne the victim's willpower'". (McGorry & McMahon, 2019, pp. 5-6). Even when Conrad was second-guessing his plan, she persistently convinced him to go through with it. It seems that at the end it was her wish for him to commit suicide rather than his. Michelle evidently took advantage of his already disrupted psychological state while her persistence establishes a direct causal relationship between her actions and outcome of the situation.

II. INCITEMENT TO SUICIDE IN BOSNIA AND HERZEGOVINA: AN ANALYSIS AND COMPARISON OF THE LEGAL REGULATION

Due to the specific constitutional regulation of Bosnia and Herzegovina, the criminal law area is regulated in four levels of authority, through four criminal codes: Criminal Code of Bosnia and Herzegovina, Criminal Code of Federation of Bosnia and Herzegovina, Criminal Code of Republika Srpska and Criminal Code of Brčko District BH. Incitement to Suicide as a punitive act has been regulated only at the levels of entities and Brčko District.

a) In the *Criminal Code of Federation of Bosnia and Herzegovina* (hereinafter CCFBH), Incitement to suicide has been prescribed in the Chapter XVI – Criminal Offence against Life and Limb, precisely prescribed in Article 170 – Incitement to Suicide and Assistance in Suicide. Paragraph 1) of this Article prescribes a basic offence of inducing or rendering aid in committing suicide, whereby the suicide has been actually committed, as a criminal offence with the sanction of imprisonment defined for a term with special minimum of three months and special maximum of five years (Article 170, par. 1, CCFBH).

Moreover, paragraph 2) defines an aggravating form of this criminal offence if it has been perpetrated against a juvenile (not reached 18 years of age) or against a person whose ability to understand the meaning of their actions or to control their actions is substantially diminished (Article 170, par. 2, CCFBH). In this case, the sanction is harsher by increasing the term of imprisonment with a special minimum of one year and a special maximum of ten years. This indicates the need to impose stricter sanctions for the special groups of individuals being affected by the criminal offence due to their vulnerability, legal capacity therefore the ability to perceive threat and understand possible consequences of their actions. The law protects everyone, however

the specific group mentioned due to their personalities and specificities (imparities) is more prone to be taken advantage of. Hence, there is a need to grant them a higher level of protection and to impose harsher punishments for those who take advantage of the position of people belonging to those groups.

On the same note, paragraph 3) imposes even stricter sanction than the one prescribed in previous paragraph, if the criminal offence of incitement to suicide has been committed towards a child or a person who lacks the ability to understand the consequences of their actions or to control them, the perpetrator shall be punished by Article 166 of the same Code – Murder (Article 170, par. 3, CCFBH). The given Article prescribes the term of imprisonment for not less than five years for deprivation of one person's life. This can be interpreted as an aggravating circumstance leading to harsher sanctions than prescribed in particular criminal offence correlating bodies of crime between the two – specifically the consequence of deprivation of one's life.

Final, paragraph 4) of Article 170 – Incitement to Suicide, prescribes specific conduct committed out of negligence (Article 170, par. 4, CCFBH). Therefore, the law even holds criminally liable a responsible person who did not act with due care, but was obliged to act so, towards a person dependent on them. The act of brutal or inhumane conduct towards a person who is in some way subordinate to or dependent on the perpetrator, whereas such conduct provokes the suicide of that person out of negligence, shall be punished by imprisonment with the special minimum of six months and special maximum of five years.

b) *The Criminal Code of Brčko District of Bosnia and Herzegovina (hereinafter CCBD)* prescribes the Incitement to suicide under Article 167, of the Chapter XVI – Criminal Offences against Life and Limb. After analyzing the provisions of the Criminal Code of Brčko District, the offence in question is aligned with all elements of criminal offence comprised within the Code of the Federation of Bosnia and Herzegovina. The only difference which may be indicated is different use of terms which, however, do not impede the overall interpretation and understanding of the criminal offence. Therefore, it can be concluded that these two codes are harmonized in regulation of this criminal offence.

c) *The Criminal Code of Republika Srpska (hereinafter CCRS)* also prescribes the criminal offence Incitement to Suicide in the Chapter XVII – Criminal Offences against Life and Limb, within Article 129. Further comparison will be reflected directly onto provisions from the CCFBH since provisions and elements of the offence correspond to the Code of Brčko District. Additionally, differences between the provisions of the two Codes will be established.

Compared to provisions of previous Codes mentioned, sanctions in the CCRS are stricter whereas for inciting or assisting suicide of another person imprisonment with special minimum prescribed is six months while in CCFBH special minimum for this type of offence is three months. Both Codes prescribe a special maximum being five years of imprisonment. For perpetrating this offence against a juvenile or a person whose ability to understand and control their actions is significantly reduced, CCRS prescribed imprisonment with a special minimum of two years and CCFBH sets a minimum of one year. (Article 129, par. 2, CCRS).

As previously mentioned, for perpetration of this offence against a child or person without the capacity to understand and control their actions, the CCFBH charges a person with Murder. However, CCRS under given circumstances charges the perpetrator with sanctions under either with Article 126 – Voluntary Manslaughter and Article 127 – Infanticide (CCRS).

Further on, both Codes agree on the sanction imposed for brutal or inhumane treatment of a person who is in a way subordinate to or dependent on the perpetrator, where the consequence of such treatment is a victim's suicide, imprisonment imposed is from six months to five years. With this provision, an end is marked to a comparison between the CCRS and the Code of the Federation although, it is not an end to the analysis of the provisions under the CCRS since it provides an extended wrap on different circumstances which may arise in relation to this criminal offence. Identical to the situation before, a slight change has been made in the CCRS whereby this provision was moved from paragraph 4) to paragraph 2).

Continuing the analysis of the Article, paragraph 5) prescribes the imprisonment with a term no longer than three years to a perpetrator who assisted another person to commit suicide with existence of mitigating circumstances (CCRS, 2017). The Court has a discretion to decide which circumstances of the case are mitigating and whether to apply them to decrease the sanction or in this case, to apply this provision. Such elaboration upon circumstances indeed is an improvement as opposed to the Code of Federation, especially since it gives direction to the Courts and ensure the society of just proceeding.

On that note, in contemporary criminal law, the element of justice is very significant in determining a sentence. This means that a just sentence is only the one that does not exceed the limits of the offender's guilt. Therefore, the general rules of sentencing are based on the principle of proportionality between the severity of the criminal offense and the degree of the offender's responsibility, on the one hand, and the sentence itself, on the other hand. On the other note, since euthanasia and assisted suicide are not legalized in Bosnia and Herzegovina, this paragraph may be interpreted

as considering occasions in which persons have a personal will to commit suicide and this usually in cases of extreme health disorders – where the person cannot bear the pain or the life such disparity will bring onto them. Perhaps, the legislators observed occurrences like these and thought of a lesser sentence for the perpetrator who assisted suicide since assistance to suicide is still a criminalized act.

Lastly, paragraph 6) reflects onto all elaborated and prescribed behavior and acts which consequently incite suicide of another person, but if the suicide has been only attempted, the Court has a discretion to punish the perpetrator less severely (CCRS, 2017). To distinguish from suicide definition, attempt to suicide is defined as: “An act of self-harm that is intended to result in death but does not. A suicide attempt may or may not result in injury” (Moutier, 2023). Notably, CCFBH does not regulate instances of suicide attempt within the incitement to suicide, nor does the CCBD. It is not extensive interpretation of the offence strictly in terms of words, but rather if observed from an aspect of covering the variety of distinguished circumstances which may influence the severity of the punishment.

Elements of the criminal offence have been elaborated across the legal research many times, some of them have been mentioned during the analysis of the FBiH’s law but, majority of them and especially criminal offences belonging to the section of Life and Limb consist of physical or so-called external elements that are crucial for evidentiary stage (Australian Government, 2002). External elements on which we base both material and immaterial evidence contribute to proving the act of the criminal offence by connecting incitement and the act of suicide.

Most common suicide methods are: suffocation, use of firearms, poisoning but also drowning and cutting veins or arteries (Choi *et al.*, 2022). As in any other case, evidence is the basis for effective criminal prosecution. When it come to this particular offence, collected evidence may be bit specific to the case as opposed to other offences. Material evidence gathered to prove execution of one of the suicide methods is highly significant, namely to confirm that person committed suicide. Subsequently, such proof minimizes the applicability of other criminal offences to the case and conclude on the cause of death. Collectively with material evidence, immaterial evidence such as testimonies of people who found themselves at the scene or were related to the person who committed suicide, especially expert witness testimonies, are perhaps even more significant to the case because they may help indicate causes and conditions that led to suicide. Mentioned immaterial evidence therefore should also be helpful to assess the psychological state of the perpetrator, with an aim to correlate it to causes and conditions inflicting the mentioned state.

According to one study, proposed material evidence which may help determine the presence of assistance or incitement to suicide is: footage from security cameras surrounding the place, photographs of the body and more evidence specific to the method of execution such as photographs of strangulation marks on the neck, forearm as well as medications or parts of explosive devices (Rašović, 2022). Material evidence may indicate, for example, that the firearm was registered under instigator's name or that hard medicaments which request doctor's prescription were bought by this instigator. Moreover, analysis of the cause of death may indicate wounds or scratches of DNA which might have been left as a result of assisting someone in suicide.

Unfortunately, there are many difficulties prosecutors may face during any stage of the criminal procedure. Very often it is hard to find lack of clear evidence which indicates causal relationship between the intent and act of incitement on one side, and suicide on the other. Verbal or written communications, even testimonies of the close relatives for example, are very subjective therefore easily misinterpreted. Additionally, interpretation could also be stagnated when privacy and freedom of speech become intertwined with the offence (Karamuço & Kalaja, 2024). This area is prone to high sensitivity, freedom to express your opinions online and highly unregulated area of online behavior. Evidently, it is hard to assess the psychological state of the deceased since the person is not present anymore as well as influence of the perpetrator of the offence on the mentioned state.

Countries must allocate significant resources towards professional training for prosecutors, police investigators, and other personnel involved in criminal proceedings, focusing on sensitive topics like suicide. Proper training is essential to balance professionalism and sensitivity, ensuring effective investigation while addressing the emotional impact on the deceased's family without promoting suicidal ideation.

In our opinion, one aspect which could be added to the provision of the offence or at least regulated under other provisions is the act of public humiliation. It is a constantly growing issue to face public humiliation and be left to the mercy of strangers to not impede your personal life and affairs, particularly through social media and internet. The effect on one's mental health is indeed devastating, especially finding yourself in such a vulnerable situation where you are unwillingly exposed to society and are receiving hateful messages and comments without your actual interference to the situation. The authorities should be more devoted to such cases for the welfare of the whole society. Additionally, as can be observed, digitalization increasingly interferes with the personal sphere of our lives whereas we may not even be aware enough of how much and how easy it is to grasp details of our life online.

III. COMPARATIVE APPROACH TO THE REGULATION OF CRIMINAL OFFENSE OF INCITEMENT TO SUICIDE

Studying the approach of various legal systems in certain topics, contributes to depicting a greater picture of their cultures, traditions and values. Besides this, in order to improve their own legal systems, legal scholars and legislators often opt out to compare the manner in which specific subject is being regulated in neighboring countries. The notion of “comparative legislation” became popular in 19th century, and it does not encompass only comparison of rules in different societies, but it also involves judicial practice and connecting it to similar approach of other legal systems (Van Hoecke, 2015). Moreover, for Bosnia and Herzegovina and its’ path towards the European Union, as for any other candidate country, it is for the best to compare and put efforts to harmonize its’ laws with the *legal acquis* of the European Union should there be prescribed a better legal solution. Therefore, a comparative study of criminal law provisions regulating incitement to suicide, excerpted from diverse countries, shall be conducted for the purpose of critically analyzing advantages and disadvantages of each respective country.

1. *The United States Legislation*

The influence of England common law was unavoidable in the United States (further as the “US”) cumulatively (Santora, 2020). Around 1970s, majority of the United States has decriminalized suicide and suicide attempts in contrast, most of them have added felony crime of assisting or abetting suicide (Wright, 1975, pp. 7-9). However, there is no specific law that criminalizes incitement to suicide, rather Federal Level Court interpret the existing law and case-law to apply them to cases which we could perceive as incitement to suicide. The Model Penal Code and case law, as it will be presented in further text, cover the notion mostly indirectly through involuntary manslaughter. Existing case-law, specifically few impactful cases shall be briefly analyzed to observe the manner in which US judicial system has dealt with cases of incitement to suicide.

Generally, there are four established types of prosecutions for encouraging suicide in the US: involuntary manslaughter, specific provisions criminalizing encouraging suicide, aiding or assisting suicide and, incitement to commit a crime (Sweeney, 2017). However, as it is evident, there is no direct particular provision of the law that criminalizes incitement to suicide on its own, rather it has been dealt with through mentioned

four types and identical case-law. Due to this inconsistency and non-codification of the offence there are so many variations in judicial interpretation of these cases. This poses a problem especially in the light of events that the US has bigger number of recorded and publicly displayed cases of inciting to suicide than any other country have researched. Although they possess remarkable number of cases compared to other countries, in which legal reasoning they do mention assisting and inciting to suicide and recognize those acts as such, they still do not have stable legal ground to address this issue.

To illustrate the previous statements let's elaborate on a case from Michigan, *People v. Roberts* 1920, in which defendant purposefully placed a glass of poison within the reach of his seriously ill wife. The background of her illness left her in agitating pain, since she had been suffering from advanced multiple sclerosis and had previously unsuccessfully attempted suicide. Ultimately, he was sentenced as guilty of murder by means of poison. Further, he contended that she, by her own choice, has committed suicide which is not criminalized in Michigan therefore, he cannot be found guilty of murder (Grieshober, 1996, pp. 6-8). The Court deliberately concluded that the man was charged with administering poison and not with suicide, taking into consideration the fact that due to her condition she would not be able to take poison without his assistance (Zavala, 2017, pp. 15-16). However, after careful discussion the Court indicated the key element is active or passive role of the defendant. Therefore: "[...] if he merely furnishes the means, he is guilty of assisting in suicide, but if he actively participates in the death of the suicide victim, he is guilty of murder" (Furbish, 1995).

However, this interpretation in *Roberts* case has been overruled as the Court commented onto ongoing trend of charging assistance or aiding in suicide as manslaughter instead of murder the background of which is visible reflection of current moral standards (Zavala, 2017, p. 16).

Therefore, in 1983 they overruled *Roberts* commenting: "[...] to the extent that it can be read to support the view that the common-law definition of murder encompasses the act of intentionally providing the means by which a person commits suicide" (Furbish, 1995). Further on, the same author explains that: "When someone merely is involved in the events leading up to the death, such as providing the means, the proper charge is assisting in a suicide" (Furbish, 1995). The overrule involved assisting or aiding suicide within the common-law definition of murder which as opposed to 1920 ruling, enables that a person which intentionally provides the means for suicide may be charged for murder. Once again, judges make the most out of the applicable laws therefore by extending this interpretation they may charge assistance to suicide under murder charges rather than manslaughter.

On the other hand, there is a complete opposition of the Texas Court in *Sanders v. State*, 1908, where the Court dismissed the notion of complicity in assisting suicide whereas: “[s]o far as our law is concerned, the suicide is innocent of any criminality. Therefore, the party who furnishes the means to the suicide is also innocent of violating the law” (Binder & Chiesa, 2018).

Subsequently, administering deadly poison from which a person may die, as it was the case in *Sanders v. State*, does not count as murder. The reasoning behind this is that the person at the case at hand had full knowledge of what they were consummating and they were not under the influence of any threat, force or fraud (*Sanders v. State*, 1908). For murder, as previously described for incitement to suicide, there must be a causal relationship between the act and consequences. In this case, the Court found that causality is unidentifiable due to absence of any proof of coercion or deception which would not dismiss the murder charge of the defendant (*Sanders v. State*, 1908). The Court commented the following: “However wicked or malicious may have been the purposes or intent of the accused in administering the poison as charged, yet if the deceased took the poison voluntarily, knowing what the result might be, her death would not constitute culpable homicide” (Binder & Chiesa, 2018, pp. 40-41). Taking into account the facts, in Texas only if one kills the victim or forces them to kill themselves will be guilty of murder otherwise, inducing, abetting and encouraging suicide will not hold person criminally liable for murder (Grieshober, 1996, p. 6).

These are just few cases selected to present the general picture of US criminal justice system’s technique for solving cases of incitement to suicide. Evidently, there is a huge need of creating a statute to regulate this kind of behavior and directly prohibit inciting, assisting and encouraging suicide rather than resorting to murder or manslaughter. Accessible case-law is significantly higher compared to other countries, creating a social problem which call to criminalize described behavior. Statutory law criminalizing encouraging and assisting suicide would also inform the general population, that did not know such behavior is criminalized in other countries, how morally wrong these actions are, and penalties imposed would make majority think before forming future decisions.

2. United Kingdom Regulation

United Kingdom has decided to decriminalize suicide with the Suicide Act of 1961, enacted on August 3 1961, most recent revision on February 1 2010, and applicable to the territory of whole England and Wales. Besides just cessation of suicide as a

criminal act, they established grounds for criminal liability for complicity in another's suicide, paragraph (1), which reads as follows:

A person ("D") commits an offence if—

- (a) D does an act capable of encouraging or assisting the suicide or attempted suicide of another person, and
- (b) D's act was intended to encourage or assist suicide or an attempt at suicide. (*Suicide Act 1961*, 1961)

Evidently, this regulation pertains and criminalizes the notion of suicide being an intended, direct and natural (in that sense foreseeable) result of defendant's act. Compared to previous US law with an unregulated and open to misinterpretation area of criminal law, English law is addressing intact particularities of incitement to suicide. Further, in the Suicide Act, the victim could be any person or class of persons, implying that it does not need to be known to or identified even by the perpetrator — person "D" (*Suicide Act 1961*, 1961). This provision is highly sufficient because it derogates the need for personal connections/relationships between the victim and the perpetrator in order to establish liability in this offence. It is contingent upon disregard and recklessness of people in contemporary society to choose words proportionate to the situation and consider that none of us are able to perceive possible consequences of our statements on psychological state of another person. Important to note is, that the Suicide Act prescribes the following remark under paragraph (1) point (b), as written in the law: "D may commit an offence under this section whether or not a suicide, or an attempt at suicide, occurs".

It may be interpreted that under the English law, the accent is on behavior of the perpetrator which objectively observed may cause suicide of another person, rather than act of suicide being carried out itself. On the other hand, one may argue that charging someone with incitement to suicide just on the basis of their own words, which may be depicted differently by any other person, is ultimately wrong. Therefore, personal suggestion would be eliminating "whether or not" in the previous point, since just mere spiteful commentary inciting suicide may be observed under other offences related to harmful speech or restricted online behavior. Hence, perhaps it is crucial to balance the focus between perpetrator's actions and actual external consequences on the victim. This notion may also be supported by the fact that prescribed punishment is imprisonment for a term not exceeding 14 years. In this essence, even though the Suicide Act does not prescribe a special minimum, sentence of 14 years gives an extensive time frame for judges to properly access gravity of circumstances of the case.

However, if such harsh sentence is prescribed, the act of suicide and attempt to suicide should be explicitly addressed as mandatory elements of this offence. Otherwise, if the legislators had mere intention to punish any type of behavior inciting and assisting suicide, disregarding the exact consequences of those actions – resulting in suicide or not, then the provisions shall pertain as such.

Textual amendments of the law imply:

Where the facts are such that an act is not capable of encouraging or assisting suicide or attempted suicide, for the purposes of this Act it is to be treated as so capable if the act would have been so capable had the facts been as D believed them to be at the time of the act or had subsequent events happened in the manner D believed they would happen (or both). (*Suicide Act 1961*, 1961)

Paragraph (2) of the Suicide Act 1961 reflects on a very particular situation in which if the accused is on trial for murder or manslaughter whereas, during this trial, it is proved that the deceased committed suicide, there is a need to prove whether facts indicate any relation to the general provisions of the offence under paragraph (1). If facts directed that the accused within the legal qualifications of this Act has indeed committed an offence, then he may be guilty of complicity in another's suicide.

Further, paragraph (3) simply provides instruction on amendments, however, the law applies in the same manner as described in this research. Additionally, paragraph (4) emphasizes the need for consent of the Director of Public Prosecutions for initiation of criminal proceeding for this offence.

Since 2009, according to the data provided by the Crown Prosecution Service (further as the "CPS"), only four cases of encouraging or assisting suicide have been prosecuted. It has been declared by the CPS: "One case of assisted suicide was charged and acquitted after trial in May 2015, and eight cases were referred onwards for prosecution for homicide or other serious crime" (Humanists UK, 2024). There has been an ongoing trend in the UK, which has a strong community of people demanding legalization of assisted dying for those helplessly sick and suffering in the UK, which contradicts the provisions of Suicide Act. In fact, Suicide Act is a main barrier toward legalization of assisted suicide since it criminalizes such behavior. This is yet a separate concern from the topic of this research while it shifts to the notion of euthanasia however, it shall be noted that society's opinions of this law are divided.

Impressive guidelines in Policy for Prosecutors issued by the Director of Public Prosecutions give a very prominent example that has not been covered explicitly

before. If for an example, the suspect believes they are supplying the victim with a lethal drug which proves to be harmless, their action is still considered as encouraging or assisting another person in suicide (The Crown Prosecution Service, 2014). The accent here is on the intent and actions committed by the suspect, even if they did not result accordingly to these. This reflects on the earlier discussed point on the accent of the offence being focused on behavior of the perpetrator which, in its' nature, encourages or assists person to suicide.

The Online Safety Act 2023 has presented a new set of laws in the UK that provide protection to both adults and children by imposing obligations on online providers to implement systems that will reduce the risks of their services and the occurrence of illegal activity as well as to give imminent reaction to take down illegal content (Department of Science, Innovation and Technology of the United Kingdom, 2024). The Act came into effect on January 31, 2024, and has introduced new criminal offences in regards to purpose of the Act, those being encouraging or assisting serious self-harm, cyberflashing, sending false information intended to cause non-trivial harm, threatening communications, intimate image abuse, epilepsy trolling (Department of Science, Innovation and Technology of the United Kingdom, 2024). The newly introduced offences apply directly to individuals who perpetrate them. This is a significant embark onto prevention of online suicide incitement and gives judiciary the opportunity to apply the law and effectively prosecute the offenders. This has been explicitly determined in subsections of the Act whereas it has been elaborated: "Content is within this subsection if it encourages, promotes or provides instructions for (a) suicide or an act of deliberate self-injury" (*Online Safety Act 2023*, 2023).

3. Criminalization of Incitement to Suicide in the Selected Countries within the EU

It ought to be mentioned that legislation of the European Union (further as the "EU") does not regulate incitement to suicide on the level of the EU. This indicates that such matter is left to national disposition of each Member State hence, there are several disparities between their legislation. In general, as mentioned by one author, there are three identified main types of incitement to suicide: aiding suicide, abetting and driving to suicide (Mäkinen, 2006). On the same note, it has been established that: "The laws vary considerably with regard to which acts are sanctioned, how severely they are punished, and whether any special circumstances such as the motive, the result, or the object can make the crime more serious" (Mäkinen, 2006). Statement made will be illustrated through legislation of respective countries whereas it may be identified

that country's current social issues and needs, as well as legal trends, significantly influence legislative process and shape the way in which the offence is being regulated. Further analysis shall also reflect onto previously established facts also in regard to different legal systems – Bosnia and Herzegovina, the United States and the United Kingdom. According to the verdict *Lings v. Denmark*, 2022,

In 2012 a comparative research in respect of forty-two Council of Europe Member States (see *Koch v. Germany*, no. 497/09, § 26, July 19 2012) showed that in thirty-six countries (Albania, Andorra, Austria, Azerbaijan, Bosnia and Herzegovina, Bulgaria, Croatia, Cyprus, the Czech Republic, Denmark, Estonia, France, Georgia, Greece, Hungary, Ireland, Latvia, Lithuania, the Former Yugoslav Republic of Macedonia, Malta, Moldova, Monaco, Montenegro, Norway, Poland, Portugal, Romania, Russia, San Marino, Spain, Serbia, Slovakia, Slovenia, Turkey, Ukraine and the United Kingdom) any form of assistance to suicide was strictly prohibited and criminalized by law. (*Lings v. Denmark*, 2022)

In some countries, such as Serbia or BiH (both aspiring to become the EU member states), there is a special form of the offence which includes behaving inhumanely towards a person who is in a subordinate or dependent position to a perpetrator. Croatia, as a neighboring country, does not contain this provision and the offence consists only in its' general form and aggravating form if the offence has been committed towards a child or a person with diminished mental capacity hence prescribing imprisonment from one to eight years (Criminal Code of Republic of Croatia, 2024). The punishment for general form of the offence is also more different than in Serbia and BiH, whereas up to three years of imprisonment have been proposed while in the other two time period prescribed is from six months to five years.

Netherlands

Netherlands in its' Criminal Code, Section 294, paragraph (1) of the Same code criminalizes incitement to suicide as follows:

"Any person who intentionally incites another person to commit suicide shall, if suicide follows, be liable to a term of imprisonment not exceeding three years or a fine of the fourth category" (Ministry of the Interior and Kingdom Relations of the Netherlands, 2023). Following paragraph (2), prescribes the same punishment for providing assistance to another person to commit suicide. Additionally, to acts prescribed

by Section 294 is applicable *mutatis mutandis* the provision of the previous Section 293 which decriminalizes this behavior if committed by a medical doctor whose occupation conforms to specific conditions set out in the law. Netherlands has skillfully handled both euthanasia and incitement to suicide. However, special devotion shall be made towards mentioned medical doctors and whether their intentions are honest. It is not possible to regulate such circumstances explicitly in the law, since circumstances of each case make them different from one another but, during procedure it should be established whether doctor's intentions were for the best outcome of the patient or was there any other benefit for them included.

Germany

Additionally, the concept of incitement to suicide in Germany is very peculiar. The law itself contains the provision – Facilitating suicide as recurring pursuit, Section 217, however, this provision does not prescribe criminal liability for inciting someone to suicide in general, but only for commercial purposes (Federal Law Gazette I, 2021). In 2015, the Constitutional Court of Germany was considering a new bill proposed in which assistance and incitement to suicide are not prohibited. The main argument against criminalization of incitement to suicide, is related to the fact that suicide itself is not a crime therefore, complicity of an instigator in incitement to suicide is not possible to determine because they did not help anyone to commit a criminal offence. Identical opinion was given by the German Constitutional Court in 2015, it being that assistance and incitement can only be prohibited when the act, the assistance and incitement is meant for, is prohibited itself. Since suicide is not prohibited by the law, inciting and providing the meaning for it was not prohibited. The bill that was passed in 2015 regulated so-called commercial assisted suicide which criminalized assisting suicide with an intent to carry out a recurring pursuit (Göken & Zwießler, 2022, pp. 2-4). In 2020, the Constitutional Court declared these provisions as unconstitutional as they impede on the right to self-determination – to decide upon your death, even though it does not concern those individuals directly. However, there are no specific conditions or approvals to be obtained as regulated in Italy. The Court shared the opinion that:

The Court emphasized that the right to end one's life is not restricted to serious or terminal diseases or to specific phases of life or of a disease. In the opinion of the Court, such a limitation would contradict the fact that the right to end one's life is rooted in human dignity and therefore does not require any additional explanation or justification. (Gelsey, 2020)

Section 217, paragraph (1) of the German Criminal Code states the following:

Whoever, with the intention of assisting another person to commit suicide, provides, procures or arranges the opportunity for that person to do so and whose actions are intended as a recurring pursuit incurs a penalty of imprisonment for a term not exceeding three years or a fine. (Federal Law Gazette I, 2021)

Previous regulation is excerpted from the most recent version of the German Code by which only assistance in suicide which as result of the perpetrator has the intention of recurring pursuit raises criminal liability of the perpetrator. Otherwise, such action is not explicitly criminalized in this provision or anywhere else in the Code. An assumption could be made that German legislators opted out for treatment of regular incitement to suicide and assistance to suicide under provisions of Murder or Manslaughter of the Code. However, there is no certain statement nor accessible case-law upon this matter which would help understand the position of German legislature. The lack of clarity on incitement to suicide is also visible in the following paragraph (2) of the same Article, in which it has been stated: "A participant whose actions are not intended as a recurring pursuit and who is either a relative of or is close to the person referred to in subsection (1) is exempt from punishment".

A relative or someone close who assists or provides the means to another person to commit suicide, if they do not have any intentions of recurring pursuit, are treated as if they did not commit any criminal offence. There are several questions related to previous facts which may raise concern. How do they prove that assistance of a relative in another person's suicide is the wish of that person? What is the line distinguishing between this behavior and murder? Why is encouraging a relative to commit suicide perceived as non-punishable and why is there no claim which considers psychological or physical of a person preceding their suicide? Overall, the right to self-determination and decision to end your life should be observed more carefully to assess truthful wishes and eagerness of the person with suicidal ideations. Such delicate matter has given perhaps too much space for misinterpretation under this law.

IV. CONCLUSIONS AND RECOMMENDATIONS

Suicide as a negative social phenomenon is spread throughout the world, in all the communities. Although it directly harms humans' life, it is not criminalized as such. However, the the potential for criminalization has the act of one person who brings the

other person in such a state of mind that they commit suicide. The criminalized act in many legislation is called Incitement to suicide. The modern style of life with the development of modern communication media brought to the attention new models of incitement, such as cybersuicide, comments in media that bring individual to making such a decision like taking their own life. In this manuscript we presented a few cases that happened in Bosnia and Herzegovina, and in other countries, in which the modern ways of incitement resulted with suicide. Therefore, we presented the legal analysis of legal regulation of Incitement to Suicide in Bosnia and Herzegovina. It has it prescribed in all three criminal codes, with similar provisions and aggravating circumstances. The higher level of legal harmonization has been achieved between the Federal and District codes, while there is a slight discrepancy regarding them and Republika Srpska, which prescribes stricter sanctions. However, neither of the codes particularized situations of internet or media incitement, which in our opinion should be additionally considered in *legi ferenda*. Based upon very recent cases in Banja Luka and Laktaši, it is evident that Bosnia and Herzegovina must regulate online behavior inciting to suicide and any type of self-inflicted harm primarily to protect the young population of the country who is under imminent threat of such behavior. Observing all points previously discussed, it seems that the prosecution is unsure on how to assess online inciting to suicide and online humiliation which led to suicide under existing laws. Consequently, newly enacted regulations in this matter shall contribute to effective prosecution and warn society that such behavior is harmful to everyone involved.

Many European countries explicitly criminalize inciting (encouraging) suicide; however, each respective country according to their own legal boundaries, collective opinions and objections, traditions, cultures, and willingness to follow liberalized legal trends or not. A significant step forward may be identified compared to the US legislation, as there is a codified criminal offense of incitement to suicide in each respective country consistent with the basic form of the offense as identified. Quite modernized is the regulation in the United Kingdom, which not only regulates cases of Incitement to suicide, but also all modern *modi operandi* that may incite an individual to commit suicide.

It is recommendable for the future to amend the existing regulations with particular provisions related to the situations where a collective incitement by commenting acts, cyber/bullying, acts of humiliation result with suicide, as they all are quite intensive acts that leave mark on individual and have a psychological impact on potential victims. The next step after that would also be raising awareness of harm and punishment for such acts. Even if such legislative acts would not be achieved, parental supervision or

platform restrictions on age may be a good path in preventing vulnerable groups of individuals from being victimized.

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